

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
:
MICHAEL NIEVES, :
:
:
Plaintiff, :
:
-against- :
:
NEW YORK STATE OFFICE OF MENTAL :
HEALTH, et al., :
:
Defendants. :
:
----- X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 12/2/2022

1:20-cv-9502-GHW

ORDER

GREGORY H. WOODS, United States District Judge:

On September 1, 2022, the Court issued a statement regarding Plaintiff's death and stayed the proceedings in this case pending the submission of a motion for substitution by any party seeking to prosecute Plaintiff's action. *See* Dkt. No. 67. Federal Rule of Civil Procedure 25(a) states that if a motion for substitution is "not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." Fed. R. Civ. P. 25(a)(1). The Court's September 1, 2022 order stated that "any party may file a motion for substitution pursuant to Rule 25(a)(1) no later than December 1, 2022." Dkt. No. 67; *see English v. Murphy-Lattanzi*, No. 12-cv-419 (JS) (SIL), 2015 WL 630248, at *2 (E.D.N.Y. Feb. 12, 2015) ("Rule 25(a)(1) provides a ninety-day window within which to file a motion for substitution, calculated from the filing of the suggestion of death. Failure to file a motion for substitution within the prescribed period generally requires dismissal of the action."). The December 1, 2022 deadline has now passed, and no motion for substitution has been filed. Accordingly, this action is dismissed pursuant to Rule 25(a)(1).

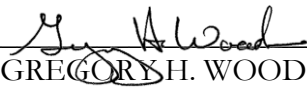
The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore IFP status is denied for the purpose of an appeal. *See Coppedge*

v. United States, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: December 2, 2022
New York, New York



GREGORY H. WOODS
United States District Judge